

REMARKS

I. Status of the Claims

Claims 1, 3-12, 14, 15 and 18-39 and new claims 40-41 are pending in this application. Claims 1, 3-10, 18-20, and 39 have been allowed. Claims 11, 12, 14, 15, and 21-38 stand rejected. No new matter is added by this amendment.

Reconsideration of the above-identified application in view of the foregoing amendments and the following remarks is respectfully requested.

II. Rejection of Claims 11, 12, 14, 15, and 21-38 Under 35 U.S.C. §103(a)

In the Office Action of July 12, 2007, claims 11, 12, 14, 15, and 21-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dan U.S. Patent 6,560,639.

III. Applicant's Response

On page 3 of the Office action, the Examiner applies the Dan reference in rejecting claim 11 using a rationale which reads in part as follows:

“See Fig. 21 for image data in addition to said content, or see lines 20-29, column 17 for including “banner object”, which is a picture in the header] wherein said packet transfer is comprised of a plurality [Each unit of information is given in a single “packet” or an HTML document].....” . “As discussed above, the image data is carried within the ‘header’ of the packets. The header is, of course, header of the html document.” “HTTP protocol allow display of downloaded objects prior to the completion of the page transfer, or in other words., during packet transfers.” “In Fig. 21, Dan does not show that the banner is in “addition to said content. It would have been obvious ... to have web page content, so that the web page header information is sent “in addition” to the web page content.”

The Examiner's characterization of the Dan reference is incorrect and is not applicable to the invention as claimed in the rejected claim 11.

Fig. 21 of the Dan reference describes the layout of a web page described in the Dan specification at column 26, line 64 to 27, line 10, which reads as follows:

By using this simple tag, the web management system 30 may connect the user's image and/or calculate its size. For example, referring to FIG. 21, an image of a fish may have a tag, Image(fish). Optionally, when the user updates the image through the Assets Manager 60, the web management system 30 may automatically recalculate the image size, if it has been changed. As long as the asset name remains the same, the user may use any file name to replace it. For example, if the name of the asset is "employee-picture" and it contains an image "Joe.gif" to replace it with new image, such as, "Jane.gif" the user need only upload the new image to the specified asset. The user may regenerate the web page or the web site, after replacing the image.

The Dan specification at column 17, lines 20-29, reads as follows:

Optionally, a Header & Footer Object form 205, for example, in the Object Manager 155 and/or in the Site Manager 116, as shown, by way of example, in FIG. 9, may be provided for creating, modifying, and/or deleting header and/or footer objects. Header and footer objects may, for example, enable a user to attach content to a header, a top portion of a web page and/or to a footer, a bottom portion of a web page. A header object may include, for example, a banner ad object 210. A footer object may include, for example, a contact information object 215.

Fig. 21 of the Dan reference and the paragraph in the Dan specification at column 17, lines 20-29 describe the layout of an HTML web page, where the top area of the page is referred to by the word "header" and the bottom area of the web page is referred to by the word "footer". The fish image of Fig. 21 and the banner image of Fig. 9 referred to by the Examiner are positioned to appear on the web page, in the top area of their respective pages in the area on the page commonly called the "header." The Examiner has erroneously characterized Dan's depiction of the top area of the web page as a "packet header," which it clearly is not. There is no "packet" mentioned anywhere in the Dan reference.

The Examiner states that "HTTP protocol allows display of downloaded objects prior to the completion of the page transfer, or in other words, during packet transfers."

However, there is no evidence in the Dan reference, or elsewhere in the Office action, of this feature. If the Examiner is taking Official Notice of this feature, then he must support it with

substantial evidence. MPEP 2144.03(B) requires that the Examiner present evidence to support an Official Notice. The section reads:

[T]here must be some form of evidence in the record to support an assertion of common knowledge. See Lee, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)

There is no disclosure or suggestion in the Dan reference of the Applicant's claimed displaying at least a portion of the image data rather than the content while waiting for the ongoing file transfer to complete in Applicant's claims 11, 36, 40, and 41.

There is no disclosure or suggestion in the Dan reference of the Applicant's claimed displaying of at least said portion of image data on a display associated with the receiving device during said ongoing packet transfer in Applicant's claims 24, 29, 35, 37, and 38.

For the above-stated reasons, all of the pending claims of this application are believed to be in condition for allowance, and an early and favorable examination is respectfully requested.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required by this response, or credit any overpayment to Deposit Account No. 13-4500, Order No. 4208-4066.

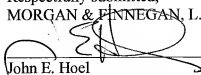
In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is

hereby authorized to charge any fee for such an extension of time or credit any overpayment for
an extension of time to Deposit Account No. 13-4500, Order No. 4208-4066.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: October 11, 2007

By:


John E. Hoel
Registration No. 26,279

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.
3 World Financial Center
New York, NY 10281-2101
(212) 415-8700 Telephone
(212) 415-8701 Facsimile